

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No. 15-md-2666(JNE/FLN)
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

This document relates to:

LINDA BENSON,

Plaintiff,

Civil Action No. 0:17-cv-3304-JNE-FLN

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Linda Benson, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 23 [Dkt. 1740], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In April of 2016, Ms. Linda Benson contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery.

2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the

original surgery.

3. On July 25, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. On October 10, 2017, counsel submitted the Plaintiff Fact Sheet in compliance with Pre Trial Order No. 14.

5. On January 4, 2019, Counsel was informed Plaintiff passed away on March 18, 2018. The Suggestion of Death was filed on January 23, 2019.

6. Plaintiff's sister, Rebecca Neff, was appointed Personal Representative of the Estate of Linda Benson on April 18, 2018 for the purpose of prosecuting this action.

7. Counsel will file Plaintiff's Motion to Substitute Party upon the receipt of the Plaintiff Fact Sheet Verification signed by Rebecca Neff and in advance of the expiration of 90 days from the filing of the Suggestion of Death.

8. While Plaintiff's filing of the Suggestion of Death was outside of the 90 day window required by Pretrial Order No. 23, Plaintiff has complied with the spirit of the order by proceeding in a timely fashion.

Accordingly, undersigned counsel requests that the current action not be dismissed with prejudice.

RESPECTFULLY SUBMITTED,

BROWN & CROUPPEN, P.C.

Dated: February 14, 2019

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